

**REMARKS**

Claims 1-3 and 6-10 are pending in the present application. Claim 11 has been cancelled herein without prejudice or disclaimer.

**PRIOR ART REJECTIONS**

A. Claim 11

Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Parulski (U.S. Patent No. 5,914,748) in view of Smith. Claim 11 has been cancelled herein. Therefore, the rejection of claim 11 is now moot.

B. Claims 1-3, 6, 7 & 10

Claims 1-3, 6, 7 & 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Parulski, and Smith, and in further view of Christian (U.S. Patent No. 6,421,462). This rejection is traversed.

This rejection is similar to the rejection of claim 11 with the addition of the Christian reference for the alleged teaching of updating the first image (the background only image) using an image of a region other than the object region of the second image (background plus object) every time a prescribed period has elapsed. The relied on portions of Christian do not teach or suggest this feature. Specifically, column 9, lines 11-20 of Christian teaches to update the

background image when the vision system 10 detects that there is an extraneous object enters the field of view of the camera 12. Extraneous objects enter the field of view of the camera 12 at random times. Therefore, the background image of Christian is not updated when “a prescribed period of time is elapsed,” as recited in claims 1 and 10. Also, in Christian, the background image is updated “to not incorporate the extraneous object into the background image.” This is not the same as “updated by using an image of a region other than the object region of said second image,” as recited in claims 1 and 10. That is, in Christian, the background is updated to remove the extraneous object. In claims 1 and 10, the background is updated to remove the main object.

Column 8, lines 62-67 of Christian also does not teach or suggest to update a first image “by using an image of a region other than the object region of said second image.” Rather, this section of Christian discloses that when a prescribed period of time elapses, a background image is updated with an image obtained by averaging a plurality of source images (e.g., the last ten captured source images). In Christian, this technique is referred to as “time-averaged background image updating scheme or scenario.” That is, the update of the background image in Christian does not use the second image.

Parulski and Smith do not make up for these deficiencies of Christian. Applicant submits that neither Parulski nor Smith teaches or suggests the feature “said first image is updated by using an image of a region other than the

object region of said second image every time a prescribed period is elapsed," as recited in claim 1 and 10.

The Examiner admits that Parulski fails to teach or suggest that the first image includes only a background and not the object, and that the second image includes the background and the object. To make up for this deficiency of Parulski, the Examiner relies on Smith for the alleged teaching of a first image that includes only a background, and a second image that includes both a background and an object.

Applicant submits that Smith does not teach or suggest a first image that includes a background and a second image that includes a background and an object (see Figs. 1 and 2). This feature of the invention makes it possible to have a moving image as the second image. Parulski handles only a captured image and does not teach or suggest the handling of a moving image. This is one reason why Parulski provides a first image including an object and a second image including a background. Therefore, Parulski teaches away from the present invention. Thus, it would not have been obvious to reconfigure the steps of capturing the first and second images in Parulski by capturing only a background as the first image and then capturing the background and the object as the second image, as asserted by the Examiner.

The Examiner relies on Figs. 1 and 2 of Smith, which represent only the first and second images of four images that are shot. As is apparent from Fig. 5

of Smith, the invention of Smith is established by Figs. 1-4. Therefore, it is meaningless to rely only Figs. 1 and 2 of Smith. Applicant respectfully submits that the Examiner has picked and chose selected portions of Smith using the present invention as motivation, which amounts to the improper use of hindsight.

The only rationale offered by the Examiner for combining Smith with Parulski is that this modification "would allow the user/photographer more flexibility during the photographing session" (see bottom of page 4 of the office action). Applicant submits that this is an insufficient reason for combining this feature of Smith to Parulski.

Also, in the rejection, the Examiner relies on column 6, lines 18-22 of Parulski for the suggested combination of Parulski and Smith. This section of Parulski is a standard comment in all patents and certainly does not provide any motivation to modify Parulski as suggested by the Examiner.

Therefore, Applicant submits that there is no motivation to combine Parulski and Smith, as asserted by the Examiner. Also, the combination of Parulski, Smith and Christian does not form the invention defined by claims 1-3, 6, 7 and 10. Thus, the rejection of claims 1-3, 6, 7 & 10 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Regarding the rejection of claim 7, the Examiner takes Official Notice that it is well known in the art to provide a notifying portion. Applicant respectfully traverses this Official Notice and requests the Examiner to find a prior art reference that teaches this feature, or withdraw the rejection.

C. Claims 8 & 9

Claims 8 & 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Parulski, Smith, Christian, and in further view of Aono, (U.S. Patent No. 5,267,333). This rejection is traversed.

Aono fails to make up for the above-noted deficiencies of Parulski, Smith and Christian. Therefore, because the combination of Parulski, Smith, Christian and Aono does not form the invention defined by claims 8 and 9, the rejection of claims 8 and 9 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Based on the foregoing, Applicant submits that the present application is in condition for allowance and allowance is respectfully solicited.

If the Examiner believes that any of the outstanding issues could be resolved by a telephone conference, Applicant respectfully requests the Examiner to contact the undersigned at the telephone number listed below.

Applicant believes that no additional fees are due for the subject application. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge Deposit Account No. 04-1105.

Respectfully Submitted,

/John J. Penny, Jr./

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